IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1563 OF 2005

Philips India Limited & Anr.)..Petitioners

Versus

P.N. Thorat, Assistant)
Commissioner of Labour &)
Conciliation Officer & Ors.)..Respondents

WITH

WRIT PETITION NO.1564 OF 2005

Philips India Limited & Anr.)..Petitioners

Versus

P.N. Thorat, Assistant)
Commissioner of Labour &)
Conciliation Officer & Ors.)..Respondents

Mr. Janak Dwarkadas, Senior Counsel with Mr. S.V. Doijode, Mr. P.A.Kabali and Ms. Meenakshi Iyer i/b. S.V.Doijode for Petitioner in both petitions.

Mr. V.M. Phal, AGP for Respondent Nos. 1 to 3 in both petitions.

Mr. J.P. Cama, Senior Counsel with Mr. Arshad Shaikh, Mr. M. Londey and S. Udeshi i/b. Sanjay Udeshi & Co., for Respondent NO.4 in Writ Petition No.1563 of 2005.

Mr. S.K. Talsania, Senior Counsel with Mr. V.P. Vaidya for Respondent Nos. 5 and 6 in Writ Petition NO.1564 of 2005.

CORAM: F.I. REBELLO &
DR. D.Y.CHANDRACHUD, JJ.
DATE : 27TH JANUARY, 2006.

P.C.:

. In Writ Petition No.1563 of 2005 the employer has sought relief for quashing the failure report and the reference dated 12th April, 2005. That reference

was made at the instance of the Philips Employees' Union, a registered trade union.

2. Writ Petition No.1564 of 2005 has been filed by the employer in respect of the failure report and reference order dated 20th April, 2005 and seeks quashing of the same. That reference was made at the instance of Respondents No.4 to 108, who sought reference as workmen of the employer company.

3. As the issues involved in both the petitions are the same or similar they are being disposed of by this common order. Two petitions had earlier been filed before this Court being Writ Petition No.3112 of 2004 and Writ Petition No.3175 of 2004. Those petitions were filed by the employees' Union and the workmen who had accepted a Voluntary Retirement Scheme (VRS) under a Memorandum of Settlement dated 10th December, 2001. The grievance of the petitioners in those petitions was that there was short fall in payment of VRS amounts and the employees were paid less commuted amounts and monthly pensions than what was promised in the settlement dated 10th December, 2001. The Union had brought to the attention of the management that the commuted amount was less than 33% and even the monthly pension was also reduced disproportionately. As the matter was not resolved an industrial dispute was raised.

The grievance of the petitioner was that inspite of raising the dispute the Conciliation Officer had failed to take further steps and consequently a direction was sought to take up the matter in conciliation and submit failure report. After hearing the parties a Division Bench of this Court observed that the Conciliation Officer was not right in contending that after having accepted VRS the relationship between the employees and management had come to an end. The learned Judge further observed that the grievance of the petitioners had a direct nexus with the 2001 VRS which had been accepted by them and certain benefits had been given to them and for that limited purpose they could be said to be workmen within the meaning of Industrial Disputes Act. In view of that finding the learned Bench directed the Conciliation Officer to take the dispute in conciliation and submit a failure report in the event of the failure within four weeks. The State of Maharashtra on receipt of failure report was also to pass appropriate orders in accordance with law within four weeks. This order of this Court was challenged before the Supreme Court by way of Special Leave Petition. The Special Leave Petition which came up for hearing on 6th May, 2005 was disposed of by the Apex Court with the following observation:-

"By the impugned order all that the High

> Court has done is to direct the Conciliation Officer to take into consideration the dispute and file a report. But it is true that the High Court has further observed that if there is failure to report, appropriate orders in accordance with law will have to be made. We do not think this observation of the High Court, in any way, prevents the petitioner from taking recourse to challenge the order of reference if any either before the High Court or raise it as preliminary issue before the industrial Tribunal as the case may be in which event the observations made by the High Court will not come in the way of the issue being decided afresh. With the above observation these special leave petitions are disposed of.

It may be noted that the S.L.P.S. were disposed of on 6th May, 2005. The orders of reference are dated 12th April, 2005 and 20th April, 2005. In other words when the S.L.Ps. were pending before the Apex Court the References had already been made.

4. The petitioner employer has come to this Court contending that there was no Industrial dispute and secondly that the employees whose cause has been espoused by the Union in Writ Petition No.1563 of

2004 and the employees who are respondents in Writ Petition No.1564 of 2005 are not workmen considering that they had accepted voluntary retirement and consequently this Court ought to quash the references.

5. On behalf of the respondent Union, Janardhan V. Bedekar, General Secretary has filed a reply. In para.3 of the reply it is set out as under:-

> The petitioner has committed breach of the said settlement by defrauding the employees of the petitioner by not paying the agreed amounts of compensation and by applying undisclosed discounting factor while calculating the lumpsum payment in commutation of one third the pension, and as a consequence thereof substantially reduced the pension to the employees."

It may also be mentioned that the employer has filed a Civil Suit being Suit No.2753 of 2003 before this Court wherein the relief prayed is for specific performance of the VRS Agreement. The Respondent Union has taken out a Motion being Notice of Motion No.3568 of 2003 for dismissing the suit. That is yet to be disposed of. It is not necessary for us to consider the averments in the plaint and the

affidavit in support of the Motion as that issue can be left for consideration by the Civil Court.

6. On behalf of the petitioners their learned Counsel relied on the judgment of the Apex Court in the case of **Bank of India and Ors. vs. O.P. Swarnakar & Ors., (2003) 2 S.C.C.721** to contend that once exgratia payment had been received under a voluntary retirement scheme, the workmen could not have resiled therefrom as the same is contractual in nature and that the employees concerned having accepted a part of the benefit could not be permitted to appropriate and reprobate nor can they be permitted to resile from their earlier stand. Reliance is also placed in the judgment of the Division Bench of this Court in **United Labour Union vs. Air India Ltd. & Ors., 2004 (6) Bom.C.R.121** to contend that as there is no industrial dispute in existence no reference could be made. The learned Bench to which one of us (Rebello J.) has held that in order to make a reference there must prima facie exist an industrial dispute. In that case on facts the Court had noted that earlier the workmen whom the union was representing had made a demand for absorption in Air India. The demand, when the settlement was signed, was given up. It is on that facts and other facts that this Court came to the conclusion that there was no industrial dispute and

accordingly the petition by the union challenging the rejection of the reference by the Appropriate Government was rejected. Reliance was also placed in the case of **ANZ Grindlays Bank Ltd. (now known as Standard Chartered Grindlays Bank Ltd.) 2005 (9) SCALE 174.** In that case a reference had been made. The reference was challenged by the employer. The Apex Court in para.11 noted that the reference made did not refer to any dispute or apprehended dispute between the bank and the Federation nor did it refer to any demand or claim made by the Federation or alleged refusal thereof by the bank and in these circumstances, it was not possible to hold that on account of the settlement dated 18th August, 1996 arrived at between the bank and the Association any dispute or apprehended dispute has come into existence between the bank and the Federation. In those circumstances the reference was quashed. The Apex Court also noted that even if the settlement is set aside the Federation would not gain in any manner as no enforceable award can be given in its favour, which may be capable of execution. It was contended that the issue ought to be raised before the reference Court. The Apex Court noted that normally a writ petition under Article 226 of the Constitution should not be entertained as the parties would get an opportunity to lead evidence before the Labour Court or Industrial Tribunal and to show that the claim

made is either unfounded or there was no occasion for making a reference. On the facts before it, the Court held that it was not a case where the infirmity in the reference could be shown only after evidence had been adduced and the futility of the reference made by the Central Government could be demonstrated from a bare reading of the terms of the reference and the admitted facts.

7. On behalf of the respondents learned Counsel firstly relied upon the judgment in the case of **Shambu Nath Goyal and Bank of Baroda, Jullundur, 1978 I L.L.J. 434,** to point out that it was not open to the Court to canvass the order of reference closely to see if there was any material before the Government to examine its conclusion as if it was a judicial or quasi-judicial determination., but it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act and, therefore, the tribunal had no jurisdiction to make the award. The Court observed that it will be open to the Tribunal to consider the issue.

. Reliance was placed on the judgment in the case of **ICI India Ltd. vs. Presiding Officer, National Industrial Tribunal & Ors., 1994 II CLR 494**

to contend that the expression 'Industrial dispute' as defined under Section 2(k) of the Act would include a dispute of the past and present workmen and that the dispute about revision of pensionary benefits could be raised by the existing workmen and the dispute takes in its sweep the benefit which is available even to a retired employee. Based on this submission, it is submitted that there is atleast a judgment of the Division Bench of this Court which has taken the view that even an ex-employee in the matter of pension could be party to the reference.

. On behalf of the workmen in Writ Petition No.1564 of 2005 learned Counsel placed reliance on the judgment in the case of **UCO** B**ank & Ors. and Sanwar Mal, 2004-II.LLJ.490** to contend that the expression resignation and retirement carry two different meanings, a resignation brings about complete cessation of master and servant relationship whereas in voluntary retirement the relationship for the purposes of grant of retiral benefits, in view of the past service , is maintained.

8. It would not be appropriate for us, considering the rival contentions and the facts, to address ourselves on those issues at this stage in the absence of a finding on facts based on which the issues raised will have to be answered. It may also

be mentioned that in respect of an earlier VRS Scheme in respect of the same employer a learned Single Judge had taken the view that there was an industrial dispute and that in a similar situation the company had played fraud on the workmen and consequently rejected the employer's contention for setting aside the award of the Industrial Tribunal. The learned Counsel, however, informs us that in an Appeal preferred against that judgment compromise terms were filed. It is not necessary again for this Court to address ourselves to that issue.

10. We may note that the Union immediately after it came to their attention that the workmen had been paid less than what they were to get under the settlement protested to the General Manager by their communication dated February 8, 2002. It was set out in the letter as under:-

> "The Company has thus committed a fraud on the employees who opted for VRS-Mumbai-2001 pursuant to the provisions of the said settlement."

An illustration was given by the Union to show how the employees had received less than what they were entitled. In the case of one Mendonca he was supposed to receive a total of Rs.15,47,760, instead

he would receive Rs.13,47,610/-. Similar instances of substantial difference of payment to Dinesh K. Malekar and Kiran M. Shah and other workmen was set out. It was also pointed out that on account of the deliberate mischief of the management the employees were further losing due to Income Tax.

9. From the above, what emerges is that there are serious triable issues. The contention of the Union and the workmen is that fraud has been practised upon them. If the workmen are able to succeed in proving that the Agreement was entered into by playing fraud it will be open to them to avoid the settlement. This issue cannot be answered by this Court at this stage as it would require evidence to be led. Prima facie a Division Bench of this Court in the very proceedings has taken note that the employees involved in both the writ petitions would be workmen. The Apex Court, however, left that question to be decided. At any rate the expression workmen considering Section 2(s) of the I.D. Act would include ex-workmen. That contention of the management that they are not workmen would require adjudication of facts. Based on these findings and the issue of pensionery benefits under VRS it will have to be considered whether the dispute partakes of an industrial dispute. This, again would be premature for this Court to decide at this stage and

it will be open to the petitioners to raise all issues before the Industrial Tribunal to which the reference is made. Similarly, the contention of the employer that they have complied with the terms of the settlement and consequently there is no industrial dispute and that the employees cease to be workmen will have to be adjudicated upon by the Tribunal.

10. Considering the above, in our opinion, this would not be a fit case where this Court should exercise its extra-ordinary jurisdiction. In the light of that both the petitions stand dismissed. In the circumstances of the case there shall be no order as to costs.

(F.I.REBELLO, J.)

(DR. D.Y.CHANDRACHUD, J.)